

DEC 5 - 2002

FEDERAL ELECTION COMMISSION

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 4789

DATE COMPLAINT FILED: August 14, 1998

DATE OF NOTIFICATION: August 21, 1998

DATE ACTIVATED: March 11, 2002

STATUTE OF LIMITATIONS:

December 6, 2001¹

AUDIT REFERRAL: 02-01

DATE REFERRED: January 29, 2002

DATE ACTIVATED: March 11, 2002

STATUTE OF LIMITATIONS:

January 20, 2003²

STAFF MEMBER: Daniel E. Pollner

SOURCE: MUR 4789: COMPLAINT GENERATED
AR 02-01: AUDIT REFERRAL

COMPLAINANT: MUR 4789: Republican Party of New Mexico

RESPONDENTS: MUR 4789: Democratic Party of New Mexico
Judy Baker, Treasurer
Thomas Atcitty
Joseph Cervantes
Deborah McDonald
Earl Potter
Ray D. Sena

AR 02-01: Democratic Party of New Mexico

¹ The earliest of the eight apparently inaccurate financial reports at issue -- the 1996 Post-General Election Report -- was originally filed on December 6, 1996. The other seven apparently inaccurate reports were originally filed as follows: (1) 1996 Year-End Report -- January 31, 1997; (2) 1997 Pre-Special Election Report -- April 28, 1997; (3) 1997 Post-Special Election Report -- June 11, 1997; (4) 1997 Mid-Year Report -- July 18, 1997; (5) 1997 Year-End Report -- February 5, 1998; (6) 1998 April-Quarterly Report -- June 2, 1998; and (7) 1998 Pre-Special Election Report -- June 11, 1998. The statute of limitations, therefore, has expired as to the all but the last three of these reports. See 28 U.S.C. §2462.

² The earliest of the four apparently excessive contributions at issue in this matter occurred on January 20, 1998. The other three apparently excessive contributions occurred on August 31, 1998, October 17, 1998, and October 31, 1998. See 28 U.S.C. § 2462.

23-04-406-0989

Judy Baker, Treasurer³

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(4)(A)
2 U.S.C. § 431(8)
2 U.S.C. § 431(11)
2 U.S.C. § 434(b)(8)
2 U.S.C. § 437g
2 U.S.C. § 438(b)
2 U.S.C. § 441a(a)(1)(C)
2 U.S.C. § 441a(f)

11 C.F.R. § 100.5(a)
11 C.F.R. § 100.7(a)
11 C.F.R. § 103.3(b)
11 C.F.R. § 104.3(d)
11 C.F.R. § 104.11
11 C.F.R. § 110.1(d)(1)
11 C.F.R. § 110.1(k)
11 C.F.R. § 110.9(a)
11 C.F.R. § 111.6(a)

INTERNAL REPORTS CHECKED: Audit Documents
Financial Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This First General Counsel's Report ("Report") covers two matters involving the Democratic Party of New Mexico ("Committee"): (1) Matter Under Review ("MUR") 4789; and (2) Audit Referral ("AR") 02-01.

³ According to Committee filings with the Commission, Joseph Cervantes was the Committee's treasurer from May 4, 1995 until June 18, 1997; Thomas Atcitty was the Committee's treasurer from June 19, 1997 until May 9, 2001; and Judy Baker has been the Committee's treasurer since May 10, 2001.

1 MUR 4789 was generated by a complaint ("Complaint") filed on August 14, 1998
2 by the Republican Party of New Mexico ("RPNM"), by and through its Chairman, John
3 Dendahl. Attachment 1. The Complaint alleges that the Committee and certain
4 individual officers of the Committee knowingly and willfully failed to disclose required
5 financial information in a series of reports that were filed with the Commission between
6 December 6, 1996 and June 11, 1998.

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12 **II. OVERVIEW**

13 **A. MUR 4789**

14 The Committee is a multi-candidate political committee that registered with the
15 Commission on September 17, 1982 and filed its most recent Statement of Organization
16 on May 11, 2001. On August 14, 1998, the RPNM filed the Complaint in MUR 4789,
17 alleging that the Committee had failed to disclose its outstanding debt in a series of
18 filings with the Commission, in violation of 2 U.S.C. § 434(b)(8). Attachment 1 at 1.
19 Specifically, the RPNM alleges that in these financial reports the Committee falsely
20 indicated that it had zero outstanding debt when in fact it had outstanding debt that should
21 have been disclosed in each of these reports. *Id.* Moreover, the RPNM contends that the
22 Committee's failure to disclose its outstanding debts was "knowing and willful." *Id.*

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8 **III. THE LAW**

9 **A. MUR 4789 – Failure to Disclose Debts**

10 **1. Reporting Outstanding Debt**

11 **Each treasurer of a political committee must file financial reports with the**
12 **Commission that include the political committee's outstanding debts.**

13 **2 U.S.C. § 434(b)(8); 11 C.F.R. § 104.3(d). Debts and obligations owed by or to a**
14 **political committee must be continuously reported until extinguished.**

15 **11 C.F.R. § 104.11(a). If the exact amount of a debt or obligation is not known, the**
16 **report shall state that the amount reported is an estimate. 11 C.F.R. § 104.11(b). Once**
17 **the exact amount is determined, the political committee shall either amend the report(s)**
18 **containing the estimate or indicate the correct amount on the report for the reporting**
19 **period in which such amount is determined. *Id.***

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2. **Knowing and Willful Violations**

Under the Act, actions that are "knowing and willful" are those that were "taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H3778 (daily ed. May 3, 1976); *see also* 2 U.S.C. §§ 437g(a)(5)(B), 437g(a)(6)(C) and 437g(d)(1). The knowing and willful standard requires knowledge that one is violating the law. *FEC v. John A. Dramei for Congress Committee*, 640 F. Supp. 985, 987 (D.N.J. 1986).

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Deborah McDonald – was not named in the Complaint, but is named as a respondent in this Report because she was notified of the Complaint and was invited to submit a response. Ms. McDonald, an assistant treasurer for the Committee, co-signed the 1998 Post-Special Election Report, which reflected that as of July 13, 1998 the Committee had debt of approximately \$54,425, including approximately \$43,000 of debt carried over from the prior reporting period. The RPNM attached this financial report to the Complaint to show the inaccuracy of the 1998 Pre-Special Election Report, which indicated that the Committee had no debt in the prior reporting period. Attachment 1 at 2, 23. The Complaint does not allege nor does it appear that Ms. McDonald violated the Act. Consequently, this Office recommends that the Commission find no reason to believe that Deborah McDonald violated the Act and close the file as it pertains to Ms. McDonald.

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1 VI. RECOMMENDATIONS

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7 3. Find no reason to believe that Deborah McDonald violated the Act in MUR 4789
8 and close the file as it pertains to Deborah McDonald;

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17 9. Approve the appropriate letters.

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Lawrence H. Norton
General Counsel

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21 Date

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BY: 
Gregory R. Baker
Acting Associate General Counsel

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Peter G. Blumberg
Acting Assistant General Counsel

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 5-7 P.B.
Daniel E. Pollner
Attorney